contractor; which party bears the burden of showing the absence of prior express permission; and statutory damages. LPC argued that the EBR issues were individualized and extensive, considering its relationships with large numbers of past and present employees, vendors, tenants and prospective tenants; determining whether such prior established businesses relationships were sufficient to give rise to an inference of implied permission would surely be an extensive individualized undertaking. However, as the Court has indicated, the statute does not encompass implied permission. Accordingly, the nature of LPC's prior dealings with all those individuals is irrelevant to the causes of action before the Court and does not cause individualized issues to predominate over common issues. Although the question of express permission is individualized, it should be relatively easy to ascertain whether any class member did give prior express permission to LPC or ABF; moreover, the record suggests that the number of such persons is relatively small. Accordingly, the Court finds that common questions predominate over individual questions.

Rule 42(b)(4) also directs the court to consider whether the class action vehicle is superior, and in that context, to consider: (a) the interest of members in controlling separate actions, (b) pending litigation, (c) desirability of the forum; and (d) management. Here, there is no indication that anyone other than class counsel has any desire to control the prosecution of this action; absent a class action it appears unlikely that any individual claims would be asserted. There is not any other pending litigation regarding the subject matter of this lawsuit. Although this forum is not especially better than any other forum,

it does seem desirable for all this litigation to be in a single forum rather than scattered about various courtrooms throughout Dallas County and North Texas.

Finally, the Court considers management of the case and how it would proceed if certified. It seems likely that most issues would be resolved by summary judgment. The underlying facts regarding how the faxes were sent are not in dispute and are common to all potential class members; individualized proof need not be presented by plaintiffs. Damages are set by statute and need not be individually proved. Although the existence of express permission is an individualized question, applying the statute as written to consider only express prior permission limits the scope of that inquiry considerably and it can probably be resolved by summary judgment. Likewise, LPC has indicated it will proceed with a motion for summary judgment on some of its legal defenses, and it is certainly possible that motion may resolve plaintiffs' claims against LPC on a wholesale basis. In short, the case appears manageable if certified and a trial, if necessary at all, would not involve any extensive individualized proof. The court finds, based on consideration of all of these factors, that common issues predominate and that the class action vehicle is superior, and therefore certifies as a class action the TCPA claims brought on behalf of confirmed recipients of LPC faxes.

With regard to the proposed sub-classes involving individuals for whom receipt confirmation does not exist and all the claims of negligence, the Court further finds that the individualized questions raised by those persons and claims predominate over

common questions and tip the balance against class certification. Plaintiffs' request for certification of those sub-classes and claims is therefore denied.

SIGNED this 12th day of July, 2001.

Judge David C. Godbey



CASE NO. 01-3456-K

JAMES E. GIRARDS and	§	IN THE DISTRICT COURT OF
JAMES E. GIRARDS, P.C. both?individually and on behalf of	§	
both?individually and on behalf of	§	
all others similarly situated,	COXCO	
Plaintiffs,	§ §	
	_	
V.	<i>§</i>	DALLAS COUNTY, TEXAS
INTER-CONTINENTAL HOTELS CORPORATION, REGISTRY DALLAS	ω	
ASSOCIATES, L.P its general partner,	§	
DALLAS HOTEL ASSOCIATES. Ltd.	§	
and AMERICAN BLAST FAX. INC.	§ §	
	§	
Defendant.	§ §	192nd JUDICIAL DISTRICT

ORDER GRANTING PLANTIFFS' MOTION FOR SUMMARY AND DECLARATORY JUDGMENT AGAINST THE CLAIMED 'ESTABLISHED BUSINESS RELATIONSHIP DEFENSE"

On April 3,2002, came on for consideration the Plaintiffs' Motion for Summary and Declaratory Judgment Against the Claimed "Established Business Relationship Defense". the Court having considered the motion, the authorities filed in support of same, the Defendants' response to the motion, the applicable law and the arguments of counsel, finds the motion well taken; it is therefore,

ORDERED, ADJUDGED AND DECREED that the Plaintiffs' Motion for Summary and Declaratory Judgment Against the Claimed "Established Business Relationship Defense" is in all things GRANTED; accordingly, the court holds and declares that there is no established business relationship exemption, exception or defense to unsolicited fax advertising under the Telephone Consumer Protection Act, 47 U.S.C. § 227. et seq

ORDER

SIGNED this the $\angle LO$ day of **April**, 2002,

JUDGE PRESIDING

CASE NO. 236-188655-01

§

BELEW, BROCK & BELEW, L.L.P. and PAUL G. BELEW, both, Individually, and on behalf of all others similarly situated,

Plaintiffs,

V.

PACE REALTY CORPORATION, MDC - PARK CREEK RESIDENCES DEVELOPMENT CORPORATION, as general partner for MDC - PARK

CREEK RESIDENCES, Ltd. and AMERICAN BLAST FAX, INC.

Defendant.

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

236th JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY

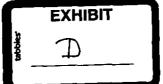
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"ESTABLISHED BUSINESS RELATIONSHIP DEFENSE"

On **August 8,2002**, came on for consideration the Plaintiffs' *Bernal* Motion for Summary and Declaratory Judgment Against the Claimed "Established **Business** Relationship Defense", the Court having considered the motion, the authorities filed in support of same, the Defendants' joint response to the motion, the applicable law and the arguments of counsel, finds the motion well taken; it is therefore,

ORDERED, ADJUDGED AND DECREED that the Plaintiffs' Bernal Motion for Summary and Declaratory Judgment Against the Claimed "Established Business Relationship Defense" is in all things GRANTED; accordingly, the court holds and declares that there is no established business relationship exemption, exception or defense to unsolicited fax advertising under the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq

ORDER Page 1



P. P.

SIGNED this the _____ day of August, 2002.

ORDER Page 2